

REMARKS

Reconsideration and withdrawal of the requirement for species election are respectfully requested in view of the remarks herewith, which place the application into condition for allowance.

The Examiner has required election of one of the following under 35 U.S.C. §121:

- I. the promoter-transactivator system and the transactivator construct incorporated into a single expression vector;
- II. the promoter-transactivator system and the transactivator construct incorporated into separate expression vectors.

Applicants elect the promoter-transactivator system and transactivator construct incorporated into a single expression vector, **with traverse**.

The MPEP lists two criteria for a proper Restriction Requirement. First, the invention must be independent or distinct (MPEP §803). Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ...even though it includes claims to distinct or independent inventions.” *Id.*

The claims of the present application represent a web of knowledge and continuity of effort that merits examination in a single application. For example, the claims as originally filed recited the promoter-transactivator system and the transactivator construct incorporated in both single and separate expression vectors (see, for example, original claim 2). Therefore, the initial search performed by the Examiner in the Office Action of March 25, 2003 should have encompassed both the promoter-transactivator system and the transactivator construct incorporated in both single and separate expression vectors. Consequently, it is believed that the requirement for restriction is improper, as it does not demonstrate that searching for both single and separate expression vectors constitutes an undue burden to the Office.

CONCLUSION

Accordingly, reconsideration and withdrawal of the Restriction Requirement is respectfully requested, and an early action on the merits is earnestly solicited.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:

for: Samuel H. Megarditchian
Ronald R. Santucci
Reg. No. 28,988
(212) 588-0800
Samuel H. Megarditchian
Reg. No. 45,678